IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

WP(C).No. 15916 of 2004(T)

PETITIONER:

TECIL CHEMICALS & HYDRO POWER LTD.,
CHINGAVANAM,REPRESENTED BY ITS DIRECTOR(OPERATION)
MR.G.JOY.

BY ADV. SRI.JOHN RAMESH K.I.JOHN

RESPONDENTS:

SALES TAX OFFICER,
SALES TAX SPECIAL CIRCLE, KOTTAYAM.

BY G.P. SRI.K.P.PRADEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE PRE-ASSESSMENT ORDER DT.28.2.2004.

P2: TRUE COPY OF REPLY TO THE PRE-ASSESSMENT NOTICE DT.8.3.2004.

P2(a): TRUE COPY OF THE CERTIFICATE DT.18.9.99.

P3: TRUE COPY OF ASSESSMENT ORDER DT.17.3.2004.

P4: TRUE COPY OF THE MINUTES OF REVIVAL MEETING DT.9.8.2002.

P5: TRUE COPY OF LETTER DT.12.9.2002.

P6: TRUE COPY OF PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDING MARCH 31ST 2000.

P7: TRUE COPY OF JUDGMENT IN W.P.(c) 3685/2004 OF THE HIGH COURT OF KERALA DT.10.2.2004.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.15916 of 2004

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Dated this the 13th day of December, 2007.

JUDGMENT

Heard counsel for the petitioner and Government Pleader. The petitioner is challenging Ext.P3 which is an exparte assessment issued for 1999-2000. It is seen that petitioner did not file any monthly return or remitted any tax including the collected tax. Petitioner's case is that the unit was closed on 5.9.1999 which is evident from Ext.P2(A) produced in court. However, petitioner was bound to file returns from April to September 1999 and should have remitted the tax payable along with monthly returns. Counsel for the petitioner submitted that petitioner is entitled to have certain assessments revised based on orders in appeal and if assessments are revised, petitioner will get refund which can be adjusted against admitted tax payable. Government Pleader on the other hand submitted that assessments are not revised for want of co-operation from the petitioner. In any case there is no justification for the petitioner to withhold collected tax on the ground that based on orders in appeal petitioner will get revision of assessment leading to refund of tax available for adjustment. In the circumstances, I direct the petitioner to remit the collected tax as shown

in the returns filed against pre-assessment notice for the year 1999-2000 along with interest before 30.3.2008 and if payment is made, there will be direction to the Assessing Officer to give an opportunity to the petitioner to produce books of accounts for completing assessment only for the period the industry worked during 1999-2000. However, if petitioner does not remit collected tax with interest as directed above, then W.P. will stand dismissed.

C.N.RAMACHANDRAN NAIR
Judge

pms